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No. 81-61

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, *et al.*,
Petitioners,

v.

GRACIE ROBINSON and JUANITA HAGER, etc.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF AFL-CIO AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE *

Amicus Curiae, American Federation of Labor and Congress of Industrial Organizations, is a federation of approximately 102 national and international unions with a total membership of approximately 14,500,000 working men and women.

AFL-CIO union members contribute to and/or participate in numerous employee benefit trust funds established and operated pursuant to § 302(c) of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 186(c). These funds, established through collective bargaining, are an important private vehicle for providing employee benefits in a stable and efficient manner.

* Pursuant to Supreme Court Rule 36, written consent to the filing of this Brief has been obtained from counsel for all parties, and the letters of consent are being filed with the Clerk of the Court.

The issue presented in this case concerns the authority of unions and employers to determine, through collective bargaining, eligibility standards and benefits for § 302 (c) (5) trust funds. The decision below would undermine the well-established role of collective bargaining in setting the terms of jointly trusteed funds. While in this particular instance the decision below might appear to be consistent with the interests advanced by the union in collective bargaining, the overriding interests of amicus and its members is in preserving free collective bargaining subject only to those limited constraints in fact imposed by other laws. Section 302(c) (5) plainly does not limit the right of collective bargaining agents to negotiate eligibility and benefits provisions such as those involved here nor authorize the courts to review for "reasonableness" such collectively bargained agreements. Amicus thus has a vital interest in the disposition of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case arises out of a challenge to eligibility rules of an employee benefit trust fund that provided lifetime health coverage to widows of certain deceased miners but only five years of health coverage for widows of other deceased miners. The court below set aside those eligibility rules even though they were the product of "deliberate and good faith collective bargaining";[1] the fact "[t]hat it was the deed of labor contract negotiators rather than fund trustees" was irrelevant to its analysis of the "rationality" of the rules. Pet. App. 12a-13a. It concluded that § 302(c) (5) of the LMRA permits a court to review not only whether the specific requirements of that statute have been met but also to determine the reasonableness of particular eligibility and benefit provisions agreed to in collective bargaining. That decision is contrary to the common law of trusts, the general policies of federal labor law, and the specific language and legislative history of § 302(c) (5).

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[1] Pet. App. 19a. (Judge Robb, in dissent, quoting Judge Gesell's opinion upholding the eligibility rule).

At common law, trust settlors could exercise complete discretion to determine trust purposes and beneficiaries, provided only that the trust did not offend some clear public policy or statute. A trustee, by contrast, is obligated to deal impartially with all beneficiaries, to the extent permitted by the terms of the trust. Not only is the settlor free of such constraints, but the courts will seek to effectuate the settlors' intent, even if in the court's opinion the settlor's scheme was neither reasonable nor wise. *See Evans v. Abney*, 396 U.S. 435 (1970).

Likewise, the fundamental policy of the national labor relations law is that of free collective bargaining, in which the government prescribes the procedure—but not the substantive result—of collective bargaining. The plain language and legislative history of § 302(c)(5) make clear that, apart from the express limitations found in the statute, Congress did not depart from that fundamental policy so as to authorize the action of the court below. On its face, § 302(c)(5)'s "sole and exclusive benefit" provision, on which the Court of Appeals relied, imposes simply a limitation on the identity of the beneficiaries of such funds: they must be employees, or their families and dependents. The legislative history, moreover, shows that Congress was concerned, not with collectively bargained eligibility rules, but with administrative diversion of funds from the benefit of employees to the benefit of union officials personally or for union political purposes. Congress acted only with regard to funds administered by union representatives, rather than all collectively bargained funds. Moreover, the statements of both the proponents and opponents of § 302(c)(5) demonstrate that the only restrictions it was intended to impose are those expressed on its face. In addition, Congress intended to extend common law doctrines to employee benefit trust administration, rather than to abrogate the common law rule that, except where clearly prohibited by statute or public policy, the court's duty is to effect the intent of the creators of the trust.

Finally, the decision of the court below is inconsistent with the approach Congress has taken to regulation of employee benefit plans in general. Congress has recognized the importance of providing clear notice of substantive requirements to be imposed on employee benefit trust funds, so that the parties in negotiating such plans can agree on benefit and funding levels with some basis for predicting future obligations. The decision below, if upheld, would promote the uncertainties that Congress acted to reduce, leading to substantial practical problems in collective bargaining about such plans.

ARGUMENT

The basic tenet of federal labor policy is to encourage "private bargaining . . . without any official compulsion over the actual terms of the contract." *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 108 (1970). Thus "[i]f the parties' agreement specifically resolves a particular issue, the courts cannot substitute a different resolution," simply because in the court's view a different resolution appears more rational or represents a better policy choice. *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 219 (1979).

There are, to be sure, two strands to the national labor policy, not one. "The first, reflected in statutes governing relationships between employees and unions, encourages the negotiation of terms and conditions of employment through the collective-bargaining process. The second, reflected in statutes governing relationships between employers and their individual employees, guarantees covered employees specific substantive rights." *Barrentine v. Arkansas-Best Freight Systems*, 101 S.Ct. 1437, 1441 (1981). The court below concluded that Section 302(c)(5) of the LMRA, in addition to the restrictions clearly spelled out in the statute, implicitly created such a right by authorizing courts to review collectively bargained eligibility rules governing employee benefit trusts

to determine whether they meet the courts' standards of reasonableness.[2]

Section 302(c)(5)'s purpose is to "ensure that employee benefit trust funds 'are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them. . . .'" *NLRB v. Amax Coal Co.*, 101 S. Ct. 2789, 2795 (1981) (citations omitted). "To ensure that the funds in such a trust are not used as a union 'war chest,' . . . the Act provides that the funds may be used only for specified benefits for employees and their dependents, and that the basis for these payments be laid out in a detailed, written agreement between the union and the employer." *Id.* at 2793-94. *See also Arroyo v. United States*, 359 U.S. 419, 426 (1959).

It is our position that § 302(c)(5), aside from its express requirement that the sole beneficiaries are to be "employees, their families and dependents," does not regulate the substance of collectively bargained eligibility rules. That position, as we now show, is supported by the common law of trusts, all the evidence that bears on the interpretation of § 302(c)(5), and the practical consequences of a contrary decision.

1. Congress' primary means of safeguarding benefit funds is to require that such funds be set up as trusts.

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[2] The only question presented in this case is whether § 302(c)(5) gives rise to the restrictions on collective bargaining eligibility rules found by the court below. No question of prohibited discrimination to encourage or discourage union membership is at issue. *Cf.* 29 U.S.C. § 158(a)(3), (b)(2); *Radio Officers' Union v. NLRB*, 347 U.S. 17, 40, 44-45 (1954); *Jandel Furs*, 100 N.L.R.B. 1390, 1392-93 (1952) (maintenance of joint welfare fund restricting benefits to union members violated §§ 8(a)(3) and 8(b)(2)). Nor has the duty of fair representation, even if it were applicable, *but see Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971), been extended to require that a standard of "rationality" be met; rather it imposes on the union, as exclusive bargaining agent, the duty to represent all employees in the bargaining unit fairly, without "hostile discrimination" against any of them. *Steele v. Louisville & N.R.R.*, 323 U.S. 192, 202-03 (1944).

NLRB v. Amax Coal Co., *supra*, 101 S.Ct. at 2794-96. We therefore begin by reviewing the basic rules regarding trusts that formed the background against which Congress acted.

At common law, the powers and duties of a settlor, or creator of the trust, are completely distinct from those of the trustee charged with administering the trust. A settlor "in creating a trust, *can make such provisions with respect to the . . . rights of the beneficiaries as he may deem wise*; and if the provisions do not run counter to any rule or policy of the law they are valid and enforceable." I Scott on Trusts § 4 (3d ed. 1967) (emphasis added). As the Restatement (Second) of Trusts (1959) (hereinafter "Restatement") notes, "A trust can be created for any purpose which is not illegal." Restatement, § 59. *Accord*, IV Scott on Trusts, *supra*, § 359; *see also* Bogert, Trusts & Trustees §§ 41, 211 (2d ed. 1965). Unless a trust or provision thereof involves the commission of an illegal act by the trustee or is against some clear public policy, the trust purposes established by the settlor are deemed valid. I Scott on Trusts, *supra*, § 59; Restatement, §§ 60-65.[3] *See, e.g., Gilbert v. Gilbert*, 39 N.Y. 2d 663, 666, 385 N.Y.S. 2d 278, 280, 350 N.E. 2d 609, 610 (1970) (settlor's intent must be effectuated "unless it is contrary to public policy or law"); *cf. First National Bank & Trust Co. v. Palmer*, 261 N.Y. 13, 17, 184 N.E. 477, 478 (1933) (courts must give effect to settlor's intent and "cannot rewrite instruments"). *See also* Bogert, Trusts & Trustees, *supra*, § 211.

The broad range of purposes for which trusts could be established at common law necessarily implied a virtually unlimited discretion in the settlor to determine

[3] The Restatement in addition includes in its discussion of illegality trusts created "for the purpose of defrauding creditors" or created for a "consideration which is illegal," although both would appear to be subsumed by the "public policy exception." Restatement, §§ 63, 64.

trust beneficiaries. Thus, settlors may determine in their sole discretion who the beneficiaries of the trust should be, and are not bound by principles of fairness or reasonableness in making such a designation. Indeed, the Restatement advises that, "The extent of the interest of the beneficiary of a trust depends upon the manifestation of the intent of the settlor. . . ."[4] Restatement, § 128. Thus, for example, private trusts providing benefits to only some heirs, or some children, or any other class or group of persons chosen by the settlor, are plainly valid, as are trusts authorizing the trustee to exercise discretion in choosing among designated beneficiaries.[5] Similarly, charitable trusts severely limiting the class of persons eligible for benefits have likewise been upheld.[6]

In complete contrast to the settlor's broad powers in this respect, a trustee's duty once the class of beneficiaries is determined is to deal impartially with and among all beneficiaries, to the extent permitted by the terms of the trust.[7] II Scott on Trusts, *supra*, § 183;

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[4] The Restatement expressly provides that this power is limited by the Rule in Shelley's Case. *Id.*

[5] *See, e.g., Ministers & Missionaries Benefit Bd. of A.B.C. v. McKay*, 64 Misc. 2d 231, 315 N.Y.S. 2d 549 (1970) (trustee discretion to determine needy relatives entitled to income); *In re Estate of Laning*, 462 Pa. 157, 339 A. 2d 520 (1975) (only those heirs members of certain church); *Sisson v. Tenafly Trust Co.*, 133 N.J. Eq. 497, 33 A. 2d 298 (1943) (trust for benefit of issue of son with any wife other than son's current wife). *But see Devlin's Trust Estate*, 284 Pa. 11, 130 A. 238 (1925) (condition that grandson be raised as Catholic void against public policy where child's mother Protestant and condition would disturb parent-child relations).

[6] *See, e.g., Beardsley v. Selectmen of Bridgeport*, 3 A. 557, 53 Conn. 489 (1886) (valid charitable trust found for "worthy, deserving, poor, white, American, Protestant, Democratic widows and orphans residing in the town of Bridgeport, Connecticut").

[7] Many employee benefit funds, including at one time the UMWA fund at issue here, gave broad discretion to fund trustees to determine eligibility standards and benefits. In reviewing early chal-

Restatement § 183; Bogert, Trusts & Trustees, *supra*, § 541. *See, e.g., Hurst v. First Kentucky Trust Co.*, 560 S.W. 2d 819 (Ky. 1978); *Connor v. Hart*, 157 Conn. 265, 253 A.2d 9 (1968); *In re Koretzky's Estate*, 8 N.J. 506, 530-32, 86 A. 2d 238, 250 (1951); *In re Estate of Whitman*, 221 Iowa 1114, 266 N.W. 28 (1936); *United States v. Powell*, 307 F.2d 821, 825 (10th Cir. 1962). Moreover, if by the terms of the trust different interests are accorded to different beneficiaries, the trustee must deal with the trust property, to the extent possible, with impartial regard for the interests of all the beneficiaries.[8] And in exercising a discretion conferred by the terms of the trust to favor one beneficiary over the other, the courts will be available to prevent abuse by the trustee of his authority. Restatement §§ 183, 232; *cf. Johnson v. Johnson*, 242 Iowa 27, 29-30, 45 N.W. 2d 573, 574 (1951) (interpreting rule of impartiality among beneficiaries, finding no abuse where property was sold by trustee given wide discretion to one of several beneficiaries at a fair price).

The deference accorded to the settlors' wishes so long as they do not contravene affirmative provisions of the law is perhaps nowhere more apparent than in that body of decisions dealing with the permissibility of modifica-

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lenges to eligibility requirements established by trustees, the courts readily found a breach in the trustees' common law fiduciary obligation to deal fairly with beneficiaries where the trustees had enacted overly restrictive eligibility requirements, or had unreasonably interpreted neutral rules. *See, e.g., Kosty v. Lewis*, 319 F. 2d 744 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 964 (1964); *see also Roark v. Lewis*, 401 F. 2d 425 (D.C. Cir. 1968). It was on these cases that the court below erroneously relied in concluding that the same standard of review applied to collectively bargained eligibility rules.

[8] This principle generally comes into play when a trust creates successive interests, such as a life estate followed by a remainder interest. Restatement § 232; III Scott on Trusts, *supra*, § 232. *See, e.g., Matter of Great Northern Iron Ore Properties*, 263 N.W. 2d 610, 621-22 (Minn.), *cert. denied sub nom. Arms v. Watson*, 439 U.S. 835 (1978).

tions or deviations from the express terms of the trust. It is well established that a court will not permit modification of the trust simply because its terms are objectionable to certain parties or the beneficiaries believe that their welfare would be served by some such modification. *See, e.g., Crocker Citizens National Bank v. Younger*, 4 Cal. 3d 202, 481 P.2d 222, 93 Cal. Rptr. 214 (1971); *Sigmund Sternberger Foundation, Inc. v. Tannenbaum*, 273 N.C. 658, 667-75, 161 S.E. 2d 116, 128 (1968); *Stanton v. Wells Fargo Bank*, 150 Cal. App. 2d 763, 770-76, 310 P.2d 1010, 1016-19 (1957). Where departure from the express terms of the trust appears necessary because of the impossibility otherwise of fulfilling its purposes or because of some extreme and unforeseen change in circumstances, the court, in authorizing such a departure, must as far as possible place itself in the position of the settlor, *Davison v. Duke University*, 282 N.C. 676, 700-01, 194 S.E. 2d 761, 776 (1973), and may only modify trust provisions in order to effectuate accomplishment of the settlor's basic purpose. Bogert, Trusts & Trustees, *supra*, § 994.

Particularly in construing private trusts, the power of the court to order a modification of the trust's terms, "does not extend to altering the dispositive provisions by introducing new cestuis, or removing old ones, or changing the shares of the beneficiaries." Bogert, Trusts & Trustees, *supra*, § 944.[9] Even in connection with charitable trusts, the doctrine of "cy pres"—permitting the modification of the terms of the trust even as to beneficiaries when a particular provision in the trust becomes impossible or illegal to fulfill—is based on an effort to

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[9] *Cf. In Re Suhling's Will*, 258 Wisc. 215, 220, 45 N.W. 2d 608, 610 (1951) ("the wisdom or lack of wisdom [of] the testatrix . . . does not open the door for questions of construction"). *See also Claflin v. Claflin*, 149 Mass. 19, 24, 20 N.E. 454, 456 (1889) (refusing to terminate spendthrift trust for child before age thirty because of duty to carry out the intent of settlor).

ascertain what the settlor's intent would be and to accomplish the basic purpose of the trust.

Thus, even where such socially repugnant provisions as those limiting beneficiaries to members of a particular racial or religious group have been at issue, the doctrine of cy pres will not permit modification of the trusts to delete the offending limitation if it appears that the settlor's purpose was only to make benefits available to the limited class set forth in the trust. This common-law principle was recognized in *Evans v. Abney*, 396 U.S. 435 (1970), where, after having held that a public park could not be operated on a racially discriminatory basis notwithstanding the terms of the trust conveying the land to the city, *Evans v. Newton*, 382 U.S. 296 (1966), the Court nevertheless upheld a state court ruling that since the settlor's intent to provide a park only for members of the white race had become impossible to fulfill, it would not be appropriate to apply the cy pres doctrine and instead the park should revert back to the heirs. The Court noted with approval the well-accepted rule that, in applying cy pres, if the testator's sole purpose cannot be effected and the testator would presumably have preferred the whole trust to fail rather than to see the removal of a restriction that had become illegal, the trust could not be modified but would fail. *Id.* at 446-47. *See also Sexton v. United States*, 300 F.2d 490, 492 (7th Cir.), *cert. denied*, 371 U.S. 820 (1962); *Continental Illinois Nat'l Bank & Trust Co. of Chicago v. Phelps*, 392 F. Supp. 313, 319-20 (N.D. Ill. 1975); *Robinson v. United States*, 632 F.2d 822, 826 (9th Cir. 1980); *Kaiser v. Gibson*, 70 Cal. Rptr. 246, 248, 264 Cal. App. 2d 319, 323 (1968). *Cf. Lockwood v. Killian*, 172 Conn. 496, 507, 375 A.2d 998, 1004 (1977); *United States v. Hughes Memorial Home*, 396 F. Supp. 544 (W.D. Va. 1975); *Wachovia Bank & Trust Co. v. Buchanan*, 346 F. Supp. 665 (D.D.C. 1972).

In enacting § 302(c)(5) Congress legislated against the background of these firmly established principles of

common law and acted in accordance with them. As we next show, Congress did not limit the power of employers and unions negotiating about employee benefit trusts to set their own eligibility rules, as long as the beneficiaries included only employees, their families and dependents.

2. The policy of the Taft-Hartley Act, together with the language and legislative history of § 302(c)(5), establish that Congress did not authorize courts to set aside collectively bargained eligibility rules of employee benefit funds on the ground that they are not "reasonable."

The fundamental theme of the Taft-Hartley Act, of which § 302(c)(5) is a part, was the principle of free collective bargaining. From the very beginning, the Wagner Act had been written "not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employers and their employees could work together to establish mutually satisfactory conditions." *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970). *See also NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937). In the Taft-Hartley Act itself, Congress acted expressly to ensure that the products of collective bargaining would remain free from governmental interference by, *inter alia*, enacting § 8(d), 29 U.S.C. § 158(d). *H. K. Porter Co., supra*, 397 U.S. at 105-06. The principle of section 8(d) forbids both the NLRB and the courts from interfering with the provisions negotiated by an employer and a union to impose on the parties "what the . . . courts might find to be the most desirable rule. . . ." *Howard Johnson Co. v. Hotel Employees*, 417 U.S. 249, 255 (1974). The Court recently reaffirmed the fundamental nature of this principle in *Carbon Fuel Co. v. United*

Mine Workers, 444 U.S. 212 (1979), noting that the policy of free collective bargaining is a "policy of particular importance—if not the overriding one." *Id.* at 218.

Nothing in § 302 suggests that Congress meant to deviate from the dominant principle of the Act to allow courts to substitute their notions of "reasonable" eligibility rules for those arrived at by the employer and union in collective bargaining. Section 302 imposed several specific limitations on employer contributions to welfare funds: (1) the fund must be in the form of a formal trust; (2) the trust must be for the "sole and exclusive benefit" of employees and their families and dependents; (3) expenditures must be made only for certain specified purposes, including pensions, life insurance, medical care and medical insurance; (4) the detailed basis of benefit payments must be spelled out in a written agreement between employer and union; (5) the trust fund must be jointly administered in a certain form; and (6) funds for pensions and annuities must be held in a trust separate from funds for other purposes. Congress provided in section 302(e), 29 U.S.C. § 186(e), that the federal courts may restrain violations of section 302, thereby creating an avenue for enforcing its specific requirements in regard to welfare funds.

The Court of Appeals in this case purported to find in the "sole and exclusive benefit" provision a principle that required a rational basis, satisfactory to the reviewing court, for any eligibility rule that denies benefits to some miners "on whose behalf significant contributions to a pension [*sic*] fund have been made," Pet. App. 8a-9a, while offering benefits to others. Nothing in the express terms of § 302 supports such a principle, and the very specificity of those requirements which Congress did include in that section refutes the Court of Appeals' holding. If Congress had intended to prohibit or restrict

eligibility rules that disqualify employees whose work had generated "substantial" contributions to a fund, or to impose any similar limitation, it is reasonable to suppose that it would have done so in language leaving no doubt about its intention.[10] Certainly the provision that limits fund expenditures to the "sole and exclusive benefit" of employees, families and dependents carries no such natural connotation. The natural meaning of that phrase is only to prohibit expenditures for the benefit of anyone who does not belong to one of those three categories.

Thus, it would plainly violate this section if a union and an employer, negotiating eligibility provisions for a trust fund subject to the terms of § 302(c)(5), were to provide for payment of benefits to persons other than employees, their families or dependents. Such a provision would violate the "sole and exclusive benefit" clause. A beneficiary of the fund could sue to restrain that vio-

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[10] In the Employee Retirement Income Security Act of 1974 ("ERISA"), Congress did legislate expressly on the subject of "vesting" requirements in pension funds. In sharp contrast to the language of § 302(c)(5), ERISA contains lengthy, detailed provisions governing the circumstances under which an employee whose work has generated contributions to a pension fund can be denied benefits from that fund. 29 U.S.C. §§ 1051-1061. When Congress acted in ERISA, it concluded that the vesting standards of ERISA should not apply to health benefit funds like those at issue in this case. *See* H.R. Rep. No. 93-533, 93d Cong., 2d Sess., at 1-14 (1974). ERISA thus demonstrates that when Congress chose to act on this subject it did so expressly and in great detail. *Cf. Teamsters v. Daniel*, 439 U.S. 551, 569-70 (1979). The observation of the Court of Appeals for the Second Circuit in *Lugo v. Employees Retirement Fund*, 529 F.2d 251, 255 (2d Cir.), *cert. denied*, 429 U.S. 826 (1976), is appropriate in this context:

> The careful attention paid by Congress in that recently enacted statute [ERISA] to the problem of effective dates and coverage makes us hesitate to conclude that the courts have long been authorized, via the fifth exception to a criminal statute [§ 302(c)(5)], to create obligations similar to those of ERISA. [Footnote omitted].

lation, and the court would have authority under the express terms of the statute to issue appropriate injunctive relief. But nothing in the section imposes any restriction on the allocation of benefits *within* the class of lawful beneficiaries.

The view of the court below is completely inconsistent with the limited scope of § 302(c)(5). The focus of the concerns that produced that section [11] was not the process of bargaining for eligibility rules but the administration of funds once they were paid over into union representatives' control. Congress did not impose limits on all benefit funds, or even on all collectively-bargained benefit funds. The only limits it legislated were restrictions on *union-administered* benefit funds. Congress knew that many benefit funds had been set up under employer administration or under administration by an outside agency chosen by the employer.[12] The potential for arbitrariness in bargaining over eligibility rules is the

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[11] The source of section 302 was an amendment offered on the floor of the Senate by Senators Taft, Ball, Donnell and Jenner, 2 Leg. Hist. 1302 (The legislative history of the Taft-Hartley Act is reproduced in two bound volumes published by the National Labor Relations Board, entitled Legislative History of the Labor Management Relations Act 1947, and cited throughout this Brief as "Leg. Hist." For ease of reference, we have cited all references to House and Senate debates to this source). The bill passed by the House would have banned such trust funds altogether, H.R. 3020, 80th Cong., 1st Sess. § 8(a)(2)(C)(ii), 1 Leg. Hist. 177-78. The bill reported to the Senate by the Senate Committee on Labor and Public Welfare would not have restricted trust funds at all, S. Rep. No. 105, 80th Cong., 1st Sess. 2 (1947), 1 Leg. Hist. 408. The primary sources of legislative history explaining § 302 are therefore the floor debates over the amendment and the Senate Committee report, including statements in supplementary and minority views appended to it.

[12] The prior Congress had considered and passed a nearly identical measure, in the form of the Byrd amendment to the Case Bill—a bill that was vetoed by President Truman. H.R. 4908, 79th Cong., 2d Sess.; 92 Cong. Rec. 6674. Senator Ball was one of the active supporters of that amendment as well, and in the extensive debates

same in employer-administered funds as it is in funds subject to union administration. It is clear that if Congress had meant to prohibit employers and unions from agreeing on arbitrary or unreasonable eligibility rules in collective bargaining, it would not have acted solely to limit union-administered funds.

The legislative history of § 302(c)(5) confirms that Congress meant to regulate the administration of funds and not the eligibility rules negotiated by the employer and union. The proponents repeatedly explained that, absent the restrictions of § 302, union representatives could bargain for payments in lieu of wages and could then divert that money to purposes other than the welfare of employees. In particular, they were concerned that such money could become a "war chest" for union support of political campaigns, or that it could be converted to the personal use of union representatives, raising spectres of bribes and "racketeering." *Arroyo v. United States*, 359 U.S. 419, 425-26 (1959). The proponents also explained that they sought to ensure that such funds would be "legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them." *Amax Coal Co., supra*, 101 S.Ct. at 2795.

None of the proponents suggested any concern about possibly unreasonable decisions by employers and unions in negotiating the written rules governing benefits that § 302 would require. On the contrary, their statements evidence a clear expectation that the problems they perceived would be solved by the requirement of a written agreement, by the requirement of a jointly administred

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in which Ball participated, the amendment's opponents repeatedly called attention to a Department of Labor study showing that about one-third of existing health benefit programs were administered without union participation. *See, e.g.*, 92 Cong. Rec. 5042, 5333, 5338.

trust, and by the provisions that restricted benefits to employees and their families and for the specific purposes enumerated in § 302.[13] For example, Senator Ball stated:

> [W]hen the union has complete control of this fund, when there is no detailed provision in the agreement creating the fund respecting the benefits which are to go to employees, the union and its leadership will always come first in the administration of the fund, and the benefits to which the employees supposedly are entitled will come second.
>
> Mr. President, all we seek to do by the amendment is to make sure that the employees whose labor builds this fund and who are really entitled to benefits under it shall receive the benefits; that it is a trust fund, and that, if necessary, they can go into court and obtain the benefits to which they are entitled.

2 Leg. Hist. 1322. *See also id.* 1313 (remarks of Senator Taft); *id.* 1498 (remarks of Senator Ball).

The legislative history plainly refutes any notion that § 302(c)(5), by way of the "sole and exclusive benefit" provision, casually created a sweeping exception to the fundamental principle that courts cannot substitute their own preferred solutions for the agreements reached by the parties in collective bargaining. In the closing moments of the debate over § 302, two of the leading opponents of the amendment raised objections to it as an

[13] The only statement made by a proponent that had any relation to rules governing eligibility for benefits was a remark by Senator Ball, in the course of a discussion of the need for controls on union discretion in administering funds, about one union-administered fund that provided benefits only to union members who were "approved by the Trustees." 2 Leg. Hist. 1322. Senator Ball's comments about that provision were that it would give the union too much control in administering the fund to punish members who "get out of line in a meeting" or "fall behind in their dues." Senator Ball's discussion, quoted in text on this page, shows clearly that he expected this problem to be solved by joint administration and by the requirement that employees' entitlement to benefits be spelled out in an enforceable written agreement. *Id.*

interference with the principle of free collective bargaining. Senator Murray argued against the general principle of imposing any limit on the liberty of contract in regard to welfare funds.[14] Senator Morse followed, articulating the same objection, but itemizing the restrictions on collective bargaining that he perceived the bill to impose:

> The amendment provides . . . that health and welfare funds shall be set up, not in the manner in which the employer, the employees and their representative may find most suitable to their local needs, but as directed by the Congress of the United States. They must be held in trust, and their purposes are to be limited to payment of medical and hospital care, pensions, sickness, disability, and accident insurance. There must be a written agreement between the employer and the employees, and employees and employers must be equally represented in the administration of the fund, and in the event of disagreement between them, machinery is provided for the settling of such disputes.

2 Leg. Hist. 1317-18. It is readily apparent that not even this strong opponent of § 302(c)(5) foresaw the

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[14] He stated:

> I should like to emphasize that the pending amendment constitutes a direct threat to another of our most precious heritages. The right of liberty to contract has always been regarded by us as an essential condition to the functioning of a free society. Why should we interfere with this right, when the subject of the contract is a health and welfare fund hurting no one and benefiting many? If this amendment is adopted, we shall have established a principle whereby the Government will be authorized to dictate any or all the terms of collective bargaining agreements. Wages, hours, working conditions, and all the thousands of other aspects of the industrial relationship would then become the direct concern of the State, which, having established the precedent, would have the power to dictate the terms to the parties to the agreement.

2 Leg. Hist. 1316. *See also* S. Rep. No. 105, Part 2, 80th Cong., 1st Sess. 23 (Minority Report) (1947), 1 Leg. Hist. 485.

interpretation of the court below. Moreover, the response of the amendment's proponents plainly indicated that no such expansive intrusion on free collective bargaining was intended. Senator Ball, who took the floor immediately after Morse, repeatedly stressed the narrow purpose and effect of the amendment:

> All that is sought to be done by the amendment is to protect the rights of employees. After all, on any reasonable basis, payments by an employer to such a fund are in effect compensation to his employees. All that is sought to be done in the amendment is to see to it that the rights of employees in the fund are protected.
>
> * * * *
>
> All it will do, Mr. President, is to keep so-called welfare funds from becoming the subject of a racket, and to see that the rights of employees who, after all, earned the compensation represented by the funds are protected.

2 Leg. Hist. 1321.[15]

Finally, this reading of the legislative history to support the plain meaning of the statute is confirmed by the Court's analysis last term in *NLRB v. Amax Coal Co., supra*, 101 S. Ct. 2789. As the Court found in *Amax*, Congress intended to act in accordance with the common law, and not in contravention of it. Thus, as the Court noted, Senator Taft had stated that § 302 (c) (5) "would ensure that the future operations of all such funds would be subject to supervision by a court of chancery." *Id.* at 2795. Just as the Court in *Amax* found that the fund trustees were to act as common-law fiduciaries in administering employee benefit trusts, so too Congress intended no disruption of the common law (as well as labor law) principles governing the freedom

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[15] Similar statements by Ball and Taft stressing the narrow purpose and effect of § 302 appear at 2 Leg. Hist. 1498, 1524, 1627.

of collective bargaining parties to determine, within the limits expressly established by statute, the funds' beneficiaries and purposes.

In sum, the natural interpretation of § 302 is the meaning Congress intended it to have. Negotiated settlements under § 302(c)(5) are subject to no substantive limits other than those that plainly appear on the face of the statute. As long as a collectively bargained fund meets the specific requirements of § 302 and violates no other laws, a court has no authority to declare the negotiated eligibility rules invalid because it cannot discern a reason for them or because it would prefer some different allocation of benefits.

3. The Court of Appeals' interpretation of § 302 is also inconsistent with the general approach Congress has taken to the subject of employee benefit plans in other statutes, and if upheld would create serious problems in the negotiation and administration of benefit plans.

Section 302 was only the first step that Congress took in the field of regulating employee benefit plans. The proponents of § 302(c)(5) acknowledged that the subject required thorough study, and they put forth that section as a "stopgap" measure to resolve what they saw as the most pressing problems of fund administration pending further study. Senate Report (Supplemental Views) at 52, 1 Leg. Hist. 458; 2 Leg. Hist. 1640 (remarks of Senator Ball). In 1958, after extensive study, Congress took another limited step in the regulation of such benefit plans, enacting the Welfare and Pension Plans Disclosure Act, 72 Stat. 997. *See Malone v. White Motor Corp.*, 435 U.S. 497, 506-07 (1978). Sixteen years later, based on further hearings and studies on the characteristics of employee benefit plans, Congress passed the Employee Retirement Income Security Act (ERISA), which for the first time imposed detailed and comprehensive regulatory limitations on employee benefit plans. 29 U.S.C. §§ 1001 *et seq.* This history establishes that Congress has acted with great caution in the field

of employee benefit plans. Against that background it would be incongruous to conclude that § 302—the first, very limited, step in regulation of this area—silently created broad judicial power to review eligibility provisions in collectively bargained plans to decide whether they are "reasonable." *See Teamsters v. Daniel, supra*, 439 U.S. at 569-70.

Such a conclusion is also flatly inconsistent with the form of regulation Congress imposed on benefit plans when it finally acted. First, although ERISA defined fiduciary standards that apply to *all* employee benefit funds, and created highly detailed and comprehensive requirements governing eligibility, funding, participation, and vesting of employee rights with respect to *pension* plans, Congress in 1974 decided not to impose similar requirements on health benefit funds. *See* H. R. Rep. No. 93-533, 93d Cong., 2d Sess., at 1-14 (1974). Thus, even in 1974 after extensive study, Congress did not impose on health benefit funds, such as those at issue in this case, standards that would require vesting of employees' rights in a fund or that forbid disqualification of employees on whose behalf employer contributions are made.

More important, the fundamental approach Congress took in ERISA is exactly contrary to the holding of the court below. Congress did not act in this area by giving the courts undefined authority to set aside provisions of employee benefit plans that seem to them "unreasonable." Instead it wrote meticulously detailed provisions that tell employers and unions in advance exactly what is required of them. *See, e.g.*, 29 U.S.C. §§ 1052-54. That form of regulation takes account of the great importance of predictability in setting up employee benefit funds. Employers and unions do not negotiate employee benefit plans in a vacuum. They may negotiate not only eligibility rules and benefit levels, but also a level of employer contributions that will be adequate to

pay for the benefits. The parties may rely on actuarial predictions in making these decisions, and those calculations are heavily dependent on being able to predict who will be eligible for what types of benefits. If a court can step in after the bargaining is done and order the inclusion of additional beneficiaries, the assumptions on which the parties bargained will be upset. In order to accommodate such additional obligations, some benefits that are expressly provided for in the collective bargaining agreement may have to be reduced.[16]

Because of these economic realities, collective bargaining on the subject of employee benefit funds would be seriously hampered if the parties' agreement were subject not only to specific requirements, known in advance, but also to judicial action that would set aside their bargain on the grounds that by judicial hindsight it is "unreasonable."[17] The ability of unions and employers to predict the cost and effects of proposed eligibility rules

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[16] The inescapable economic relationship between contributions and benefits was the basis of the Court's opinion in *Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702, 723 (1978). In the course of explaining why it was error for a lower court to require refund of employee pension contributions found to violate Title VII of the 1964 Civil Rights Act, the Court said:

> If, as the courts below apparently contemplated, the plaintiffs' contributions are recovered from the pension fund, the administrators of the fund will be forced to meet unchanged obligations with diminished assets. If the reserve proves inadequate, either the expectations of all retired employees will be disappointed or current employees will be forced to pay not only for their own future security but also for the unanticipated reduction in the contributions of past employees. [Footnotes omitted.]

[17] Moreover, as Judge Feinberg pointed out in his opinion for the Court of Appeals for the Second Circuit in *Lugo v. Employees Retirement Fund*, *supra*, 529 F.2d at 255, determining permissible standards on subjects like eligibility rules, vesting rights, and funding of employee benefit plans "is a complex task more appropriate for Congress than for the courts."

and benefit levels is crucial to the prospects of reaching agreement: as with almost all economic issues, the employer's chief concern is cost, while the union's chief concern is benefits for employees. If the cost of what the union wants cannot be predicted with reasonable certainty, it becomes substantially more difficult—if not impossible—for the parties to find a middle ground. That process cannot be subjected to a regime that would allow a court to second-guess the resolution reached by the parties and change the benefit levels or eligibility rules to something that better suits the court's ideas of fairness.

These practical consequences of the decision below underline the importance of adhering to the fundamental policy of free collective bargaining. The decision of the Court of Appeals below undermines that policy without any sanction in § 302.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the District of Columbia should be reversed.

Respectfully submitted,

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